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BEFORE THE HIGH COURT OF CHHATTISGARH AT BILASPUR [CHHATTISGARH]

W.P. No. 3868 /2006

PETITIONER : Smt. Elizabeth Kujur, aged about 30 years, W/o. Shri Rajendra Kumar, Village & Gram Panchayat- Gattibuda, Block-Duldula, District-Jashpur (C.G.).

P.R. No. 3930/06
Presented by Shri Vivek Shrivastava
dated 25/12/06

VERSUS

RESPONDENTS

1. State of Chhattisgarh, through – Collector, Distt. Jashpur (C.G.).
2. Sub Divisional Officer (Revenue), Kunkuri, Distt. Jashpur (C.G.).
3. Presiding Officer, Naib Tahsildar, Tehsil-Kunkuri, Distt. Jashpur (C.G.).
4. Gram Panchayat, Gattibuda, Through – Panchayat Secretary, Post office – Kujara, Block Duldula, Distt. Jashpur (C.G.).

OATH COMMISSIONER ★ APARNA MALVIYA CG 2107 ★ Bilaspur Chhattisgarh

RECEIVED-COPY
CLERK to A. G. BILASPUR

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

to submit as

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP...3868... **सन् 2006**

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	8.8.2006 Shri Virendra Sharma, Adv. for the petitioner. Shri N.K. Agarwal, Dy. Adv General for respondent Nos.1 to 3 on advance copy. Heard learned counsel for the parties on admission. By the instant petition, the petitioner has questioned the legality and correctness of the order dated 22.4.2006 (Annexure P-5) whereby the prescribed authority i.e. Sub Divisional Officer (Revenue), Kunkuri passed an order that no confidence motion moved against the petitioner herein has been carried out and the petitioner is not entitled to continue as Sarpanch of Gram Panchayat Gattibuda, Block Duldula, District Jashpur. The order impugned is per-se illegal and contrary to the provisions of Section 21 (1) of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short 'Adhiniyam, 1993'), therefore, this petition is being disposed of at the admission stage itself without giving notice to respondent No.4, as issuance of notice is not going to serve any purpose and same will unnecessary delay the disposal of this petition. However, if respondent No.4 still feels aggrieved by this order, he will be at liberty to move an application for recalling of this order. Brief facts giving rise to this petition are that the petitioner herein was elected as Sarpanch of Gram Panchayat Gattibuda in the year 2005. As per Rule 3 (1) of Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, 1994 (for short "Rules, 1994") the Up-Sarpanch and some Panchas of Gram Panchayat Gattibuda gave a notice to the	

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ...W.P.3868/06... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

prescribed authority on 10.4.2006 to move the no-confidence motion against the petitioner herein. The prescribed authority after satisfying himself about the admissibility of notice, as envisaged under Section 21(3) of the Adhiniyam, 1993, issued notices to the members of Panchayat under Rule 3 (3) of the Rules, 1994 and fixed the meeting of the members of Panchayat to consider the notice regarding no confidence motion on 22.4.2006 at 11 am in the Panchayat Building, Gattibuda. The Naib Tehsildar, Kunkuri Shri B.R. Bhagat was appointed as presiding officer to conduct the proceedings of no confidence motion. The meeting of panchayat was convened and according to certified copy of the proceedings (Annexure P-3) total 14 members of the Panchayat including the petitioner herein participated in the meeting and cast their votes. Out of total 14 members, 10 members voted in favour of motion, 01 member voted against the motion and 03 votes were found invalid and it was held that the motion was carried out.

The provisions of sub-section (1) of Section 21 of the Adhiniyam, 1993 envisages that :

> "**21. No-confidence motion against Sarpanch and Up-Sarpanch.**- (1) On a motion of no-confidence being passed by the Gram Panchayat by a resolution passed by majority of not less than three fourth of the panchas present and voting and such majority is more than two third of the total number of Panchas constituting the Gram Panchayat for the time being, the Sarpanch or Up-Sarpanch against whom such motion is passed, shall cease to hold office forthwith."

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मामला क्रमांक ...M. 3868/06..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

It is admitted position that that total members including the Sarpanch and Up-Sarpanch of Gram Panchayat Gattibuda are 16 and in view of the provisions of sub-section (1) of Section 21 of the Adhiniyam, 1993, in order to carry out the motion three fourth members of the members present and participating in the meeting and two third number of members of total members ought to have cast their votes in favour of the motion. In the present case two third of the panchas constituting the Gram Panchayat comes to 10.7, whereas, only 10 members have cast their votes in favour of the motion, as per proceedings Annexure P-3 and order Annexure P-1, as such, the motion was not carried out, therefore, the order of the prescribed authority is totally contrary to the provisions of sub-section (1) of Section 21 of the Adhiniyam, 1993 and same is liable to be set aside.

In the result, the petition of the petitioner is allowed and the impugned order dated 22.4.2006 (Annexure P-5) is hereby set aside.

Consequently, M.(W.)P. No.3022/06 also stands disposed of.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge

Roshan

11.8.06

P.T.O.